

Where an exempt organization is engaged in ongoing selling activities (for example, sales of items in a thrift shop run by a church), then the organization must register with the Department as a retailer, file returns and remit sales tax on such sales. See 86 Ill. Adm. Code 130.2005 (This is a GIL.)

July 10, 2003

Dear Xxxxx:

This letter is in response to your letter dated March 13, 2003. The nature of your letter and information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

The purpose of this letter is to request clarification for the correct application of sales tax in several types of transactions outlined below.

Facts:

- AAA is a STATE nonprofit corporation exempt under IRC 501(c)(3).
- AAA will potentially employ habitat specialists in the state of Illinois to carryout activities of wildlife habitat restoration to help landowners meet the requirements of various government programs (CRP, CREP, etc.) or simply to improve land for wildlife benefit.
- AAA customers will potentially consist of farmers and non-farmers.

Transactions:

1. Sale of native grass and wildflower seed, trees and shrubs, and the labor for installation to meet the requirements of various government programs outlined in the Federal Farm Bill or elsewhere. AAA will make the sales to both farmers and non-farmers.
2. Sale of native grass and wildflower seed, trees and shrubs, and the labor for installation for habitat projects independent of any government programs to both farmers and non-farmers.
3. Sale of native grass and wildflower seed only, without labor provided, to both farmers and non-farmers.
4. Sale of maintenance services such as mowing, burning and brush cutting to both farmers and non-farmers.

Issues:

- For each transaction we request a ruling on whether or not the seed, trees and labor are taxable.

- Does the purpose of the sale, whether for government programs or not, matter in determining what is taxable?
- Does the type of customer, farmer or non-farmer, matter in determining what is taxable?
- What documentation is required of AAA if a customer is exempt from sales tax?

If you require any additional information, please contact me.

In general, the Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

Organizations making application to the Illinois Department of Revenue and determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). This number evidences that the Department recognizes the organization as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purpose. If an organization does not have an E number, then its purchases are subject to tax. Only sales to organizations holding the E number are exempt, not sales to individual members of such organizations. Please refer to the enclosed copy of 86 Ill. Adm. Code 130.2007 for guidance on application for an E number.

Organizations that have E numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. Organizations can use their E numbers to purchase items for such limited exempt sales. However, if an exempt organization is engaged in ongoing selling activities (for example, sales of items in a thrift shop run by a church), then the organization must register with the Department as a retailer, file returns and remit sales tax on such sales. For these types of ongoing sales, the organization would provide their supplier with a Certificate of Resale for the items they purchase to resell in order to avoid paying the Use Tax, and then remit Retailers' Occupation Tax on the gross receipts from the sales. See 86 Ill. Adm. Code 130.1405, enclosed, describing the requirements for executing Certificates of Resale.

We have no information that AAA has obtained an E number from the Department of Revenue. Regardless, it does not appear that the sales of native grass, wildflower seeds, trees and shrubs would be exempt from Retailers' Occupation Tax liability under the three limited exceptions to taxable sales allowed to exempt organizations. Such sales are part of ongoing selling activities conducted by AAA. Persons engaged in the business of selling agricultural products, such as plants and trees, or engaged in the business of selling seed, to purchasers for use or consumption and not for resale are engaged in the business of selling tangible personal property at retail. Please see the enclosed Department regulations, 86 Ill. Adm. Code 130.1905 and 130.2110. As the purchasers are not purchasing the seed, grass, trees or shrubs for resale but for their own use or consumption, AAA must register with the Department of Revenue as a retailer, file returns and remit sales tax on such sales.

As stated above retail sales of tangible personal property are subject to Retailers' Occupation Tax liability and the seller must collect and remit sales tax on such sales unless the sale is specifically exempted. Such exemptions do not generally depend on the type of purchaser (i.e. farmer) but

instead on the type and purpose of the sale itself. For example, a sale at retail of farm machinery and equipment used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs is not subject to Retailers' Occupation Tax if the purchaser certifies the use of such machinery or equipment when obtaining the exemption. See 86 Ill. Adm. Code 130.305. There are no exemptions from sales tax under Illinois law for the sale of seeds, grass, trees or shrubs for use in habitat projects or as part of government programs.

In your letter you provide limited information regarding your activities as to the sale of native grass, wildflower seeds, trees, and shrubs with the labor for installation to farmers and non-farmers as part of certain government programs or habitat restoration projects. From such limited information it appears you may be considered a landscape contractor. Please refer to the enclosed copy of 86 Ill. Adm. Code 130.1940, the Department's regulation governing the tax liability of "Construction Contractors and Real Estate Developers". The term "construction contractor" includes a landscape contractor and the meaning of "construct" includes to install or plant. See Section 130.1940(a)(1) and (3). A landscape contractor does not incur Retailers' Occupation Tax liability on the gross receipts from labor furnished and tangible personal property incorporated as an integral part of real estate when furnished and installed as an incident to a landscape contract. For example, a landscape contractor does not incur sales tax liability on the receipts from selling and installing plants, trees, shrubs, seedlings, sod and grass seed when planted in the ground. See Section 130.1940(c)(2). The landscape contractor does, however, incur a Use Tax liability on his cost price of the tangible personal property purchased for incorporation into the real estate. Section 130.1940(c). Please also refer to the enclosed copy of 86 Ill. Adm. Code 130.2075. It must be noted, however, that when a landscape contractor engages in selling tangible personal property without installation to purchasers for use or consumption, the contractor is making a sale for retail and will incur Retailers' Occupation Tax on the sale. The contractor must be registered with the Department, file returns and remit the sales tax to the Department. Please see 86 Ill. Adm. Code 130.2075(b) for information regarding how a purchasing contractor can certify to the seller that such contractor will assume accountability for the tax when it is impracticable to determine at the time of the sale how the tangible personal property will be disposed of.

Finally, your letter mentions the sale of maintenance services, such as mowing and brush cutting performed by AAA. Illinois Retailers' Occupation Tax does not apply to sales of service that do not involve the transfer of tangible personal property to customers. With regard to the maintenance services, services such as lawn care type maintenance services do not generally involve the transfer of tangible personal property to the customer and are not subject to sales tax in Illinois. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. For your general information, please refer to the enclosed copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at [www.state.il.us](http://www.state.il.us). If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in item 1 through 8 of Section 1200.110(b). Such regulation may be obtained from our website mentioned above.

Sincerely,

Dana Deen Kinion  
Associate Counsel

DDK:msk  
Enc.